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January 26, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: GEN Docket No. 90-314 - Amendment of the Commission's Rules to Establish New
Personal Communications Services

Yesterday, Jim Tuthill, Vice President, External Affairs and General Counsel, Pacific Bell Mobile Services, and I met with: Karen Brinkmann, Senior Advisor to Chief, Rosalind K. Allen, Assistant Chief, Jackie Chorney, Senior Legal Advisor to the Chief, Wireless Telecommunications Bureau; James R. Coltharp, Chief Economist, Wireless Telecommunications Bureau; David Furth, Acting Chief, Barbara Esbin, Special Counsel, David Nall, Acting Legal Branch Chief, Rhonda Lien, Attorney, Commercial Radio Division, Wireless Telecommunications Bureau; John Cimko, Chief, Nancy Booker, Legal Advisor to the Chief, Elias Johnson, Attorney, and Michael Wack, Deputy Chief, Policy Division, Wireless Telecommunications Bureau; and Ruth Milkman, Senior Legal Advisor to Chairman Hundt, to discuss the PCS Safeguards Plan of Pacific Bell, Nevada Bell, Pacific Bell Mobile Services, and Pacific Telesis Mobile Services, particularly with respect to the issues summarized in Attachment A. The material in Attachment B was also distributed. In addition, Teresa D. Baer, of Latham and Watkins, was present at the meeting with Ruth Milkman, and Joseph Rose, an intern at Pacific Telesis, was present at the meetings with the Commercial Radio Division and the Policy Division of the Wireless Telecommunications Bureau.


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We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Gina Harrison

cc: Rosalind K. Allen
Nancy Boocker
Karen Brinkmann
Jackie Chorney
John Cimko
James R. Coltharp
Barbara Esbin
David Furth
Elias Johnson
Rhonda Lien
Ruth Milkman
David Nall
Michael Wack

Attachments

OUR SAFEGUARDS PLAN SHOULD BE APPROVED NOW

PLAN WAS FILED 6 MONTHS AGO

WE FILED OUR PLAN ON 7-10-95.

COMMENTS FILED ON 8-16-95: COX,
SPRINT, AIRTOUCH, MCI, &
NEXTEL:OUR COMPETITORS.

WE FILED REPLIES ON 9-12-95: RULES
FOR OUR PLAN ARE ESTABLISHED,
WE HAVE MET THEM, AND
OBJECTIONS ARE UNTIMELY PFRs.

WE HAVE EXCEEDED THE COMMISSION'S RULES

- THE RULES WERE CLEAR, AND WE HAVE MORE THAN COMPLIED:
 - INTERCONNECTION;
 - ACCOUNTING SAFEGUARDS;
 - VOLUNTARILY OFFERED TO COMPLY WITH CPNI AND NETWORK DISCLOSURE RULES.
- UNFAIR TO CHANGE THE RULES AFTER THE AUCTION.

THE CPUC HAS REBUKED AIRTOUCH'S ATTACK.

- AIRTOUCH MADE SIMILAR ARGUMENTS TO CPUC.
- CPUC REJECTED ITS ARGUMENTS: EXISTING AFFILIATE TRANSACTION RULES ARE ADEQUATE.
- “AIRTOUCH HAS PROVIDED NO BASIS TO CONCLUDE THE ISSUE SHOULD BE REVISITED.”

PLAN APPROVAL SHOULD NOT BE DELAYED BY CELLULAR RULEMAKING

- ISSUES ARE SIMILAR, BUT THERE ARE IMPORTANT DIFFERENCES.
 - OUR PLAN, BASED ON YEARS OF WORK BY FCC, WOULD SERVE AS MODEL.
 - OPPONENTS ARE “GAMING” THE REGULATORY PROCESS FOR COMPETITIVE ADVANTAGE.
-

OCT 30 '95 09:49PM PACIFIC BELL

COM/bjk

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Attachment B

MAIL DATE
10/30/95

Decision 95-10-032 October 18, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
Own Motion Into Mobile Telephone)
Service and Wireless Communications.)

I.93-12-007
(Filed December 7, 1993)

I.93-12-007 COM/bjk

three specific categories of transactions described below,⁷ we shall further extend the existing exemptions to cover all CMRS carriers, including facilities-based cellular carriers, and to cover all of the provisions of both Articles 5 (Sec. 816-830) and 6 (Sec. 851-855).

Accordingly, we shall forbear from requiring preapproval of transactions involving issuances of stock and other securities as well as transfers of ownership and acquisition or encumbrances of CMRS property except, again, those discussed below. For exempted transactions, we shall not require CMRS carriers to seek authorization through the Executive Director of the Commission, but shall require carriers to make an informational filing under our Wireless Registration procedures reporting any changes in ownership interests of a CMRS entity within five days of the execution of such changes. We shall relieve all CMRS providers from the requirement to file an application or advice letter for authority to execute such exempt transactions which would otherwise be required under §§ 816-830 and 851-856. If any such applications and advice letters are now pending before us, they shall be dismissed. This uniform exemption should further streamline our regulation and promote competition.

(a) Motion for Declaratory Relief by Pacific Bell
Mobil Services and Pacific Telesis Mobil Services

Notwithstanding carriers' general opposition to active Commission regulation of CMRS financing transactions, certain parties have raised concerns over the applicability of Commission

⁷ These three categories are: (1) the financing of a CMRS affiliate by a facilities-based LEC or a facilities-based interexchange carrier (IEC) (or their affiliates), (2) an ownership interest in a CMRS entity being acquired by a facilities-based LEC or facilities-based IEC (or their affiliates) and (3) an ownership transfer where a controlling interest is acquired.

I.93-12-007 COM/bjk

jurisdiction with respect to financing transactions involving relationships between a wireline local exchange carrier and its wireless affiliate.

These concerns were raised in the context of the motion filed on June 19, 1995 by Pacific Bell Mobile Services (PBMS) and Pacific Telesis Mobile Services (PTMS) for an order that any Commission approvals for its PCS network are preempted by the Budget Act. Pacific Telesis Group formed PTMS and PBMS, following the spinoff of PacTel Corporation (now AirTouch), to develop a PCS network in California. To facilitate the financing of its PCS network and to remove uncertainty as to the need for Commission preapproval of any financing vehicles, PBMS seeks a Commission ruling stating that financing transactions are conditions precedent to entry and are therefore preempted under the Budget Act.

Responses in opposition to the motion were filed by AirTouch, MCI, LACTC, and CCAC. Parties generally argue that the motion requires the Commission to gather additional information regarding the nature of the proposed financing to assure that no harm comes to ratepayers or to the competitive marketplace. AirTouch provided some of the most extensive comments on the motion. AirTouch states that Pacific has structured its PCS business in a manner which enables Pacific to leverage LEC utility assets for operation of its PCS subsidiary. AirTouch contends that competitors will be placed at a significant disadvantage if PBMS utilizes Pacific Bell's existing landline network, marketing channels, captive customer base, and other resources for operation of its PCS subsidiary while denying competitors equal access to those resources. AirTouch requests that the Commission defer ruling on the Motion and institute an investigation to determine the relationship among the Pacific Telesis Group affiliates, the impact of the relationship on the CMRS marketplace, and the adequacy of affiliate transaction rules to protect ratepayers.

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A third-round pleading was filed on July 28, 1995 by PBMS in response to the AirTouch response. PBMS also attached a motion for acceptance of its third-round pleading. PBMS argues that it should be allowed to respond to the AirTouch response which went beyond comment on the issue raised in the PBMS motion and effectively contains a separate motion.

We shall accept the PBMS third-round pleading because it provides information relevant to resolving the parties' dispute and addresses the AirTouch proposal for the Commission to institute a separate investigation. PBMS opposes AirTouch's proposal that an investigation be instituted regarding the impact on the CMRS marketplace of the relationship among the Pacific Telesis Group affiliates, and the adequacy of the affiliate transaction rules to protect ratepayers.

Since we have concluded above that we retain jurisdiction over CMRS financing transactions, the PBMS motion is denied insofar as it seeks an order finding that we are preempted with respect to such transactions. We agree with PBMS, however, that no good cause has been shown to justify instituting a formal investigation into the Pacific Telesis affiliates, as requested by AirTouch. On July 1, 1994, Pacific filed Advice Letter No. 17025 to reflect a revenue reduction for expenses related to early development work for PCS which was incorporated in Pacific's retail rates. In its supplemental Advice Letter No. 17025(B) regarding its PCS service, Pacific requested Commission confirmation that affiliate transaction rules apply to transactions between PBMS, Pacific Bell, and other affiliates. By Resolution T-15627 dated October 26, 1994, the Commission confirmed that existing affiliate transaction rules are adequate.

As stated in Resolution T-15627:

"The [affiliate transaction rules] were created to cover situations where utilities provide services to unregulated entities in which the utility had some financial interest, exactly the case expected for PCS. The affiliate rules

should not need to be revised to fit each new service, and we will make no amendment to the rules here."

PBMS is bound by those rules with respect to affiliate activities involving its PCS network. AirTouch has provided no basis to conclude that this issue should be revisited or that circumstances have changed since our resolution was issued. Accordingly, we reject AirTouch's request for a separate formal investigation on affiliate transactions.

(b) Advance Notice to CACD Required of Certain Proposed CMRS Transactions

Apropos a general policy, we shall not require CMRS carriers to notify CACD in advance of any proposed CMRS transactions except those transactions involving either (1) the financing of a CMRS affiliate by a facilities-based LEC⁸ or a facilities-based interexchange carrier (IEC) (or their affiliates), (2) an ownership interest in a CMRS entity being acquired by a facilities-based LEC or facilities-based IEC (or their affiliates) or (3) where transfer of ownership control of a CMRS entity is contemplated. For purposes of this last provision, a transfer of ownership control would occur if an existing or prospective owner or group of owners acquired a larger ownership share than the largest holding of any current owner. We choose to maintain some oversight over the first two types because we wish to ensure that captive ratepayers are protected until intra- and inter-LATA competition develops further. As to the third type of transaction, we wish to retain the ability to ensure that the participants in an ownership transfer have complied fully with our rules and regulations.

⁸ The term "facilities-based LEC" is defined in the rules for local exchange competition adopted in R.94-04-043.